IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy of the judgement? No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No. : NO

5. Whether it is to be circulated to the Civil Judge? No. : NO

DARBAR GAMBHIRSINH SHIVUBHA

Versus

STATE OF GUJARAT

Appearance:

MS YAMINI J DESAI for Petitioners

MR BY MANKAD, APP for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 11/12/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr. B.Y. Mankad, Learned A.P.P. for the revision respondent - the State. At the request of both the learned advocates of the parties, this matter is taken up for final hearing today.

2. Original accused no. 1 and 2 of Criminal Case No. 199 of 1999 which was pending before the learned J.M.F.C. of Manavadar, have filed this Criminal Revision Application u/s 397 of the Criminal Procedure Code, 1973 (for short "Cr.PC") challenging correctness, legality and propriety of the judgment exh. 5 dated 10-10-2000 rendered by the Sessions Court, Junagadh in Criminal Appeal No.34 of 2000.

3. Heard Ms. Yamini Desai learned advocate for the revision petitioner and Mr. B.Y. Mankad learned A.P.P. for the State - revision - opponent.

4. The revision petitioners have challenged the order of confiscation of the "muddamal" articles more particularly the amount in cash which was found at the place of the offence. She has argued that the accused have been acquitted for the offence punishable u/s 8 of the Bombay Prevention of Gambling Act, 1887. Such type of confiscation order cannot be passed if the accused are acquitted. This type of contention has been taken by the learned counsel for the revision petitioner for the first time before this Court. The Sessions Court has not considered the provisions of Section 8 of the aforesaid Act. In view of this, Criminal Appeal No. 34 of 2000 which was pending before the leaned Sessions Judge, Junagadh, is required to be remanded back with suitable directions.

5. In view of what is stated hereinabove, this Revision Application is allowed and the order dated 10-10-2000 passed in Criminal Appeal No.34 of 2000 by the learned Sessions Judge, Junagadh is ordered to be remanded back to the Sessions Court with a direction to hear the aforesaid Criminal Appeal and decide the same after affording reasonable opportunity of being heard to both the parties. The learned Sessions Judge, Junagadh is directed to consider the provisions of Section 8 of the aforesaid Act and legal position with regard to it and then decide the aforesaid criminal appeal afresh in accordance with law strictly on merits without being influenced by this order. Rule is made absolute to the aforesaid extent.

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/JVSatwara/